IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16928 of 2006
Date of decision:6.12.2006

M/s. Delta Overseas, Ludhiana and others

....Appellant

versus

Union of India and others

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Ashok Aggarwal, Sr. advocate with
Mr. Rajesh Garg, Advocate, for the petitioners.

Mr. MS Guglani, Advocate, for the respondents.

JUDGMENT:

This writ petition seeks quashing of order dated 20.10.2006, Annexure P.2, whereby respondent No.3, Senior Intelligence Officer, Directorate of Revenue Intelligence, Ludhiana, seized the balance lying in the bank accounts of the petitioners in violation of order of this Court dated 7.9.2006 in CWP No.5969 of 2006, Annexure P.1.

Case of the petitioners is that petitioner Nos. 1 and 2 are sole proprietorship concerns, belonging to Shri Kulbhushan Goyal, proprietor (who is also petitioner No.6 in his capacity as Karta of HUF and petitioner No.7 in his individual capacity), while petitioner Nos. 3 to 5 are partnership concerns of which Shri Kulbhushan Goyal was a partner. Petitioner No.8 is wife of Shri Kulbhushan Goyal. The bank accounts belonging to the petitioners were seized/attached by the Customs Department, which was challenged by them by filing CWP No.5969 of 2006, which was allowed by this Court. In violation of the said order, a fresh order, Annexure P.2 has been passed.

A reference to order of this Court, Annexure P.1 shows that contention raised therein was that accounts were seized without authority of law which was defended by the Customs Department on the plea that seizing of the account was for the purpose of investigation and securing financial interest of the Government. Seizure was defended by referring to section 110(1) and (3) of the Income tax Act, 1961 (for short, 'the Act') i.e., goods being liable to confiscation or documents being useful for proceeding under the Act. This Court noticed that no order determining liability of the petitioners having been passed, either for recovery of the amount or to the effect that there was any liability for confiscation, seizure of bank accounts was not legally justified. Reference was also made to seizure permissible under section 102 of the Code of Criminal Procedure, which provision had not been invoked. Finally, this Court concluded as under:-

> "In the present case, there is no adjudication - administrative or quasi-judicial or judicial by any authority either determining any liability of the petitioners, provisional or final or holding that the amount in bank account represented sale proceeds of any smuggled goods or was otherwise liable to confiscation or that the seizure of the account will be useful for or relevant under the provisions of the Act. It has not been shown that any proceedings are pending against the petitioners except that petitioner No.7 has been summoned as a witness for giving evidence as per Annexures P.5, P.6 and P.7. Show Cause Notice Annexure P.8 has also been issued alleging that goods exported by some of the petitioners were liable to confiscation and amount of draw back claimed and received fraudulently was liable to be recovered under Rule 16 of the Customs and Central Excise Duties Drawback Rules, 1995 read with section 76(1) (b) of the Customs Act. The said show cause notice is dated 13.3.2005 and no further order has been shown.
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> In view of the above, we are of the view that the bank account of the petitioners cannot be kept seized for indefinite period. Respondent No.2 who has seized the bank account is directed to pass an appropriate order within one month from the date of receipt of a copy of this order releasing the bank account unless by then any other appropriate order justifying seizure of bank account is passed."

Stand on behalf of the respondents is that this Court while holding that the seizure at earlier stage was illegal, directed release of bank account "unless by then any other appropriate order justifying seizure of bank account is passed."

Case of the respondents is that bank account was not released as further order dated 20.10.2006 was passed within one month of receipt of copy of earlier order to the effect that the balance lying in the bank accounts of the petitioners was sale proceeds of spurious/smuggled goods and the amounts pertained to drawback and DEPB, fraudulently obtained, which were liable to confiscation under section 110 read with Section 121 of the Customs Act, 1962. In view of this finding, a direction was issued that balance lying in the bank accounts be converted into fixed deposit receipts in favour of the account holders pledged to the President of India through the Commissioner, Customs, Amritsar.

We have heard learned counsel for the parties.

Learned counsel for the petitioners merely stated that the impugned order was illegal for the same reason for which earlier order of seizure was set aside and no fresh development had taken place which could justify seizure of the amount in the absence of an order determining liability of the petitioners.

Learned counsel for the respondents, on the other hand, pointed out that the amount represented duty drawback received by the petitioners fraudulently for which proceedings were in progress and a reasonable belief was reached that the amounts were liable to be confiscated under section 110 read with sections 75, 113 and 121 of the Act and there was difference in situation after the passing of the earlier order which justified the impugned order.

Learned counsel for the respondents further pointed out that petitioner No.1 purchased goods from petitioner No.2 and while availing facility of drawback of duty, a mis-declaration that they had not availed Cenvat credit was filed which was against record. Petitioner Nos. 1 and 2 resorted to forgery and mis-declaration. Proprietors or partners of connected firm admitted that exports had not been made. The petitioners had obtained illegal export incentives of about Rs.7 crores.

Having regard to the fact that an order has been passed indicating that according to the respondents, the amount in question was liable to confiscation and correctness of the said order has not been put into issue on merits except on the ground of violation of order Annexure P.1. We are unable to hold that the impugned order, Annexure P.2 is liable to be set aside for violation of order of this Court, Annexure P.1, which, as already observed, was to operate for release of bank account "unless by then any other appropriate order challenging seizure of the bank account is passed". Such an order having been passed, contention that there was violation of order of this Court dated 7.9.2006,Annexure P.1 cannot be upheld. We make it clear that we have not gone into validity of order Annexure P.2 on merits lest remedies of the petitioners against such an order are prejudiced.

The writ petition is dismissed.

(Adarsh Kumar Goel)
Judge

December 6, 2006
'gs'

(Rajesh Bindal)
Judge